SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/25/2002 CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES P. M. Espinoza
Deputy

LC 2002-000197

FILED: _____

ALIESHAWSONGAM WALKING BADGER JAMES S DUNHAM

v.

STATE OF ARIZONA GEOFFREY WRESCHNER

CHANDLER CITY-MUNICIPAL COURT
DOCKET-CRIMINAL-CCC
REMAND DESK CR-CCC

MINUTE ENTRY

CHANDLER CITY COURT

Cit. No. #179251

Charge: 1. DUI-ALCOHOL/DRUGS/VAPOR/COMBO
2. DUI-BAC OVER .08
3. EXTREME DUI OVER .15
4. MINOR DUI

DOB: 03/16/79

DOC: 09/15/01

The Court has determined that the Appellee's true name (spelling) is: **ALIESHAWSONG** WALKING BADGER.

IT IS THEREFORE ORDERED directing the clerk to amend the caption to reflect the true name (spelling) of the Appellee.

This Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution Article VI, Section 16, A.R.S. Section 12-124(A), and A.R.S. Section 13-4032(6).

This matter has been under advisement since its assignment to this court on September 26, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the arguments of counsel, their memoranda and the record of the proceedings from the Chandler City Court.

On September 15, 2001 Appellee, Alieshawsong Walking Badger, was arrested by the Chandler Police and charged with: (1) Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); (2) Driving With a Blood Alcohol Content Greater than .08 Within 2 Hrs. of Driving, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2); (3) Extreme DUI, a class 1 misdemeanor offense in violation of A.R.S. Section 28-1382(A); and (4) Minor Consuming Alcohol, a class 1 misdemeanor offense in violation of A.R.S. Section 4-244.33. Appellee entered pleas of Not Guilty and filed a Motion to Suppress all evidence which she claimed was the fruit of an unreasonable stop by the Chandler Police officers of her vehicle. Appellee claimed the police lacked a “reasonable suspicion” to stop her vehicle. The trial court conducted an evidentiary hearing on March 7, 2002. On March 12, 2002 the trial judge “reluctantly” granted Appellee’s Motion to Suppress, making no specific findings, nor stating his reasons for granting the motion. A timely Notice of Appeal was filed by the State in this case.

Appellant claims that the trial court erred in suppressing all evidence gathered after an unreasonable stop of Appellee’s vehicle. Appellant claims that the Chandler Police Officers did have a “reasonable suspicion” which would justify the stop of

Appellee's vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime.[1] These facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."[2] A.R.S. Section 13-3883(B) also provides, in pertinent part, authority for police officers to conduct an "investigative detention":

> A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.[3] In Whren[4], the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the

[1] Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).
[2] United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, (1981).
[3] Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).
[4] Id.

vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.[5]

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.[6] An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.[7] This Court must review those factual findings for an abuse of discretion.[8] Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.[9] This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.[10]

The facts of this case reveal that Chandler Police Officer Daniel McQuillin stopped the vehicle driven by Appellee after observing Appellee's vehicle drifting back and forth upon the roadway.[11] The officer noted that there were no lines or lanes painted upon the roadway at this point.[12] The officer also explained, in answer to the judge's questioning, that he would have stopped Appellee's vehicle for this weaving upon the

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[5] Id.
[6] State v. Gonzalez-Gutierrez, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); State v. Magner, Supra.
[7] Id.
[8] State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).
[9] State v. Chapple, 135 Ariz.
[10] State v. Gonzalez-Gutierrez, 187 Ariz. At 118, 927 P.2d at 778; State v. Magner, 191 Ariz. At 397, 956 P.2d at 524.
[11] R.T. of March 7, 2002, at page 17.
[12] Id.

roadway, regardless of any other information provided to him by a dispatch officer.[13] The testimony of officer McQuillin that Appellee's vehicle weaved within its lane upon the roadway is corroborated by testimony of Appellee. Appellee testified that she had purchased some food and was in the process of unwrapping that food when her car probably weaved upon the roadway.[14] Specifically, Appellee testified: "I probably moved within my lane, because I was focusing on trying to open my food at the same time (indiscernible statements that were unable to be transcribed)."[15]

And, in response to the judge's questions, Appellee testified:

> Yes. So I did take off my eyes off the road for a split second. ... Yes, I believe it (the car) drifted. But I'm certain I did not pass over you know where I'm not suppose to go, the lane marker. ... I felt my car (indiscernible statements that were unable to be transcribed). I mean you know, going over so far (indiscernible statements that were unable to be transcribed). If I was to do it that far, I would probably jerked myself farther, even more (indiscernible statements that were unable to be transcribed).[16]

It is clear from the transcript that the trial judge was looking for some specific traffic violation to justify the stop of Appellee's vehicle. The law in Arizona does not require that a traffic violation actually occur, to justify the brief detention of a suspect and the stop of the suspect's vehicle. A suspected violation of a traffic law is sufficient to justify a

[13] Id., at page 23.
[14] Id., at page 25.
[15] Id.
[16] Id., at page 27.

traffic stop.[17] The evidence before the trial judge was unanimous and undisputed, as Appellee had admitted that she had weaved within her lane of traffic, consistent with the weaving described by Officer McQuillin. Therefore, there is no factual basis to support the trial court's ruling that the arresting officer lacked a reasonable basis to stop Appellee's vehicle. This Court also determines de novo that the facts testified to by Officer McQuillin and Appellee do establish a reasonable basis for the Chandler Police to have stopped Appellee's vehicle.

IT IS THEREFORE ORDERED reversing the order of the Chandler City Court that granted Appellee's Motion to Suppress.

IT IS FURTHER ORDERED remanding this matter back to the Chandler City Court for all further and future proceedings, including a trial.

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

[17] See, State v. Bodette, 164 Ariz. 180, 791 P.2d 1063, cert.denied, 498 U.S. 903, 111 S.Ct. 267, 111, L.Ed.2d 223 (1990).